

AMENDED IN SENATE MAY 22, 2002

AMENDED IN SENATE MAY 1, 2002

AMENDED IN SENATE APRIL 18, 2002

**SENATE BILL**

**No. 1700**

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**Introduced by Senator Peace**

February 21, 2002

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An act to add Division 8.6 (commencing with Section 22970) to the Business and Professions Code, *and to amend Section 30473.5 of the Revenue and Taxation Code*, relating to tobacco.

LEGISLATIVE COUNSEL'S DIGEST

SB 1700, as amended, Peace. Tobacco products.

Existing law vests the State Department of Health Services with primary responsibility for enforcement of tobacco control laws prohibiting the sale of tobacco products to minors, and requires the department to conduct random onsite inspections at retail sites. Existing law, the Cigarette and Tobacco Products Tax Law, requires distributors and wholesales of cigarette and tobacco products to be licensed by the State Board of Equalization. *The Cigarette and Tobacco Tax Law also requires a tax imposed by the law with respect to distributions of cigarettes to be paid by distributors through the use of stamps or meter impressions. Possession, selling, or buying false or fraudulent stamps or meter impressions with a tax value greater than \$750 is a crime.*

This bill would provide for the licensure by the State Board of Equalization of manufacturers, distributors, wholesalers, and retailers of cigarette and tobacco products that are engaged in business in California. The bill would prohibit retailers, manufacturers, distributors, and wholesalers from distributing or selling those cigarette

and tobacco products unless they are licensed. The bill would require manufacturers of cigarette and tobacco products that provide those products to distributors or wholesalers to pay the board a fee for each pack of cigarettes sold. The bill would require all moneys collected pursuant to its provisions to be deposited in the Cigarette and Tobacco Products Control Fund, which would be created in the State Treasury, and all funds therein would be available for appropriation by the Legislature for specified purposes. The bill would authorize the board to assess administrative fines and to suspend or revoke the license of any retailer of tobacco products that is in violation of the ~~retailer provisions and bill~~ or the laws prohibiting the sale of cigarette and tobacco products to minors.

The bill would prohibit a manufacturer, distributor, wholesaler, or retailer from selling counterfeit cigarette and tobacco products and would provide that a ~~2nd~~ violation of that prohibition is a ~~felony crime~~. *The bill would impose specified fines or imprisonment for possessing, selling, or buying false or fraudulent cigarette tax stamps.* The bill, until January 1, 2007, would preempt any local ordinance that requires a retailer to obtain a license to sell cigarette and tobacco products, but would ~~authorize~~ allow stricter local ordinances thereafter.

Because a ~~2nd~~ violation of ~~this bill's prohibition against selling counterfeit cigarette and tobacco products~~ *the bill* would be a ~~felony crime~~, the bill would impose a state-mandated local program ~~by creating a new crime~~.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Division 8.6 (commencing with Section 22970)

2 is added to the Business and Professions Code, to read:

3

DIVISION 8.6. TOBACCO CONTROL

CHAPTER 1. GENERAL PROVISIONS

22970. The Legislature finds and declares all of the following:

(a) Youth consumption of cigarette and tobacco products is a serious public health problem.

(b) Eliminating youth access to and consumption of cigarette and tobacco products is a significant statewide public health goal.

(c) Uniform statewide licensure to reduce youth access to and consumption of cigarette and tobacco products is necessary to guarantee the protection of children.

(d) Uniform statewide licensure of retail cigarette and tobacco sales enhances a retailer's ability to eliminate cigarette and tobacco sales to minors by reducing overlap and confusion and reduces costs of compliance.

~~(e)~~

(e) The licensure provisions of this chapter are intended to supplement and enhance existing provisions of law and penalties for illegal sales of tobacco products but are not intended to supplant those provisions or penalties.

22971. For purposes of this division, the following terms shall have the following meanings:

(a) "Board" means the State Board of Equalization.

(b) "Department" means the State Department of Health Services.

(c) "Distributor" means a distributor as defined in Section 30011 of the Revenue and Taxation Code.

(d) "Manufacturer" means a manufacturer of cigarette and tobacco products.

(e) "Retailer" means a retailer of cigarette and tobacco products.

(f) "Wholesaler" means a wholesaler as defined in Section 30016 of the Revenue and Taxation Code.

(g) "*Cigarette*" means any roll for smoking, made wholly or in part of tobacco, irrespective of size or shape and irrespective of whether the tobacco is flavored, adulterated or mixed with any other ingredient, where the roll has a wrapper or cover made of paper or any other material, except where the wrapper is wholly

1 *or in the greater part made of tobacco and the roll weighs over*  
2 *three pounds per thousand.*

3 (h) *“License” means a license authorized to be issued by the*  
4 *board pursuant to this division.*

5 (i) *“Licensee” means any person holding a license issued by*  
6 *the board pursuant to this division.*

7 (j) *“Sale” includes any transfer of title or possession for a*  
8 *consideration, exchange or barter, in any manner or by any means.*

9 (k) *“Tobacco products” includes, but is not limited to, all forms*  
10 *of cigars, smoking tobacco, chewing tobacco, snuff, and any other*  
11 *articles of products made of, or containing at least 50 percent*  
12 *tobacco, but does not include cigarettes.*

13 (l) *“Unstamped package of cigarettes” means a package of*  
14 *cigarettes that does not bear a tax stamp pursuant to Part 13*  
15 *(commencing with Section 30001) of Division 2 of the Revenue and*  
16 *Taxation Code, or that bears a tax stamp of another state or taxing*  
17 *jurisdiction.*

18 (m) *“Unlawfully stamped package of cigarettes” means a*  
19 *package of cigarettes bearing a counterfeit California state tax*  
20 *stamp.*

21 (n) *“Untaxed tobacco products” means any tobacco product*  
22 *upon which the tobacco products surtax has not been paid*  
23 *pursuant to Part 13 (commencing with Section 30001) of Division*  
24 *2 of the Revenue and Taxation Code.*

25 (o) *“Person” includes any individual, firm, partnership, joint*  
26 *venture, limited liability company, association, social club,*  
27 *fraternal organization, corporation, estate, trust, business trust,*  
28 *receiver, trustee, syndicate, this state, any county, city and county,*  
29 *municipality, district, or other political subdivision of the state, or*  
30 *any other group or combination acting as a unit.*

31  
32 CHAPTER 2. RETAILERS, WHOLESALERS, AND DISTRIBUTORS OF  
33 CIGARETTE AND TOBACCO PRODUCTS  
34

35 22975. (a) Commencing January 1, 2004, a retailer that sells  
36 cigarette and tobacco products in this state shall obtain from the  
37 board a valid ~~retailer’s~~ license to sell cigarette and tobacco  
38 products and shall maintain that license *on the premises for which*  
39 *the license was issued.* A retailer that owns or controls more than  
40 one retail location where cigarette and tobacco products are sold

1 ~~to the public~~ shall obtain a separate license for each retail location,  
2 but may submit a single application for those licenses.

3 (b) *The license obtained pursuant to subdivision (a) shall be*  
4 *conspicuously displayed at the place of business for which it was*  
5 *issued. A licensee that has no regular place of business shall*  
6 *conspicuously display a certificate prescribed by the board on*  
7 *each of its carts, stands, trucks, or other merchandising devices*  
8 *through which it sells cigarettes or tobacco products in this state.*

9 (c) *Every person that owns or, if the owner is not the operator,*  
10 *the person that operates one or more vending machines through*  
11 *which cigarettes or tobacco products are sold in this state,*  
12 *regardless of whether located on the premises of the vending*  
13 *machine owner or, if the owner is not the operator, the premises of*  
14 *the operator or the premises of any person, shall register each*  
15 *vending machine with the board. On or after January 1, 2004, a*  
16 *vending machine registration certificate, in the form as may be*  
17 *prescribed by the board, shall be affixed to each machine through*  
18 *which cigarettes or tobacco products are sold in this state.*

19 22976. The application for a ~~retailer~~ license to sell cigarette  
20 and tobacco products shall be on a form ~~provided~~ prescribed by the  
21 board and shall include the following information:

22 (a) The name, address, and telephone number of the applicant.

23 (b) The business name, address, and telephone number of each  
24 retail location where cigarette and tobacco products will be sold to  
25 the public.

26 (c) *Any other information the board may require.*

27 22977. (a) A retailer is qualified for a license and the board  
28 shall issue the license to the retailer when the board receives a  
29 completed application, unless the retailer has previously been  
30 issued a license ~~for that location~~ and is currently serving a  
31 suspension of the previously issued license. ~~A copy of the license~~  
32 ~~shall be available at the location for which the license was issued.~~

33 (b) A retailer applying for a license after completing a  
34 suspension pursuant to this division shall not be issued a license  
35 until any unpaid taxes *required pursuant to Part 13 (commencing*  
36 *with Section 30001) of Division 2 of the Revenue and Taxation*  
37 *Code and fees required pursuant to this division are paid.*

38 (c) *The board may revoke the registration of a person or refuse*  
39 *to register an application for a license for a location that is the*  
40 *same premises as that of a person whose registration is revoked or*

1 whose revocation is pending, unless the person applying provides  
2 the board with adequate documentation demonstrating that the  
3 person acquiring the premises or business is in an arms length  
4 transaction. For purposes of this section, an “arms length  
5 transaction” means a sale in good faith and for valuable  
6 consideration that reflects the fair market value in the open market  
7 between two informed and willing parties where neither party is  
8 under any compulsion to participate in the transaction. A sale  
9 between relatives, related companies, or partners or a sale for the  
10 primary purpose of avoiding the effect of the violations on the  
11 premises, is presumed not to be an arms length transaction.

12 (d) Any person or licensee convicted of a felony pursuant to  
13 Section 30480 of Revenue and Taxation Code shall not be granted  
14 a license, or if a person holds a license, that license shall be  
15 revoked.

16 22977.1. A retailer shall retain ~~proof of purchase for invoices~~  
17 ~~pursuant to Section 22978.1 for all cigarette and tobacco products;~~  
18 ~~including the name, address, and license number of the distributor~~  
19 ~~that supplied the products for a period of one year from the date~~  
20 ~~of purchase.~~

21 ~~22978. The retailer’s license to sell cigarette and tobacco~~  
22 ~~products is not transferable to a new person or entity or to a new~~  
23 ~~location. purchased. The records shall be maintained for a period~~  
24 ~~of one year from the date of purchase on the premises for which the~~  
25 ~~license was issued and thereafter shall be made available for a~~  
26 ~~period of three years. Any licensee found to be in violation of these~~  
27 ~~requirements shall be subject to penalties pursuant to Section~~  
28 ~~22991.~~

29 22977.2. (a) A person that engages in business of selling  
30 cigarettes or tobacco products in this state without a license or  
31 after a license has been suspended or revoked, and each officer of  
32 any corporation which so engages in business, is guilty of a  
33 misdemeanor punishable as provided in Section 22991.

34 (b) Each day that a retailer offers cigarette and tobacco  
35 products for sale or exchange without a valid license for the  
36 location from which they are sold shall constitute a separate  
37 violation.

38 22978. (a) A distributor or wholesaler, or a distributor  
39 functioning as a wholesaler, shall not sell cigarette and tobacco  
40 products to a retailer, wholesaler, or distributor, or a distributor

1 *functioning as a wholesaler, for distribution or sale in this state*  
2 *unless the retailer, wholesaler, or distributor is properly licensed.*  
3 *Any distributor or wholesaler found in violation of these*  
4 *requirements shall be subject to penalties pursuant to Section*  
5 *22991.*

6 *(b) A distributor or wholesaler shall not sell cigarette and*  
7 *tobacco products to any licensee whose license has been*  
8 *suspended or revoked.*

9 *(c) Each separate sale to an unlicensed retailer shall constitute*  
10 *a separate violation.*

11 *22978.1. (a) Every distributor or wholesaler shall include*  
12 *the following information on each invoice for the sale of cigarette*  
13 *and tobacco products:*

14 *(1) The name, address, and telephone number of the distributor*  
15 *or wholesaler.*

16 *(2) The state license number of the distributor or wholesaler as*  
17 *provided by the board.*

18 *(3) The name, address, and retailer's license number of each*  
19 *customer.*

20 *(4) The amount of excise taxes paid by the distributor or*  
21 *wholesaler on the sale of cigarette and tobacco products.*

22 *(5) An itemized listing of the products sold.*

23 *(b) Each distributor and wholesaler of cigarette and tobacco*  
24 *products subject to licensing under this division shall maintain for*  
25 *a period of four years accurate and complete records relating to*  
26 *the sale of cigarette and tobacco products, including, but not*  
27 *limited to, receipts, invoices, and other records required by the*  
28 *board.*

29 *(c) Failure to comply with the provisions of this section shall be*  
30 *a misdemeanor subject to penalties pursuant to Section 22991.*

31 *22979. (a) Except as provided in Section 22981, the board*  
32 *shall take action against a retailer convicted of a violation of the*  
33 *STAKE Act (Division 8.5 (commencing with Section 22950)) or,*  
34 *Section 308 of the Penal Code, or this division according to the*  
35 *schedule set forth in subdivision (b). Violations by a retailer at one*  
36 *retail location shall not be accumulated against other locations of*  
37 *that same retailer. Violations accumulated against a prior retail*  
38 *owner at a licensed location shall not be accumulated against a new*  
39 *retail owner at the same licensed location. Prior to suspending or*  
40 *revoking a retailer's license to sell cigarette and tobacco products,*

1 the board shall notify the retailer. The notice shall include  
2 instructions for appealing the license suspension or revocation.

3 (b) (1) Upon the first conviction of a violation of the STAKE  
4 Act (Division 8.5 (commencing with Section 22950)) ~~or~~, Section  
5 308 of the Penal Code, *or this division*, the retailer shall receive a  
6 warning letter from the board that delineates the circumstances  
7 under which a retailer's license may be suspended and the amount  
8 of time the license may be suspended. The retailer and its  
9 employees shall receive training on tobacco control laws from the  
10 department upon a first conviction.

11 (2) Upon the second conviction of a violation of the STAKE  
12 Act (Division 8.5 (commencing with Section 22950)) ~~or~~, Section  
13 308 of the Penal Code, *or this division* within ~~12 months~~ five years,  
14 the retailer shall be subject to a fine ~~of not to exceed~~ five hundred  
15 dollars (\$500) *and a 30-day suspension of the license to sell*  
16 *cigarette and tobacco products.*

17 (3) Upon the third conviction of a violation of the STAKE Act  
18 (Division 8.5 (commencing with Section 22950)) ~~or~~, Section 308  
19 of the Penal Code, *or this division* within ~~24 months~~ five years, the  
20 retailer shall be subject to a fine ~~of not to exceed~~ one thousand  
21 dollars (\$1,000) *and a 90-day suspension of the license to sell*  
22 *cigarette and tobacco products.*

23 (4) Upon the fourth conviction of a violation of the STAKE Act  
24 (Division 8.5 (commencing with Section 22950)) ~~or~~, Section 308  
25 of the Penal Code, *or this division* within ~~36 months~~, the board  
26 ~~shall suspend the retailer's license to sell cigarette and tobacco~~  
27 ~~products for 90 days.~~ *five years, the licensee shall be subject to a*  
28 *fine not to exceed one thousand dollars (\$1,000) and a one-year*  
29 *suspension of the license to sell cigarette and tobacco products.*

30 (5) Upon the fifth conviction of a violation of the STAKE Act  
31 (Division 8.5 (commencing with Section ~~22950~~ ~~or~~ 22950)),  
32 Section 308 of the Penal Code, *or this division* within ~~48 months~~  
33 *five years*, the board shall revoke the retailer's license to sell  
34 cigarette and tobacco products.

35 (c) ~~The decision of the board to suspend or revoke the retailer's~~  
36 ~~license may be appealed to the board within 30 days after the notice~~  
37 ~~of suspension or revocation. All appeals shall be submitted in~~  
38 ~~writing. The final decision to suspend or revoke the retailer's~~  
39 ~~license may be appealed to the board within 30 days after the~~  
40 ~~action becomes final. All appeals shall be submitted in writing.~~

*The timely filing of an appeal to the board shall prohibit a license suspension or revocation and the payment of an administrative fine until the appeal is heard and decided. Once the appeal is heard and decided, a license suspension or revocation upheld by the board on appeal shall be effective on the date of the board's decision and an administrative fine upheld by the board shall be paid within 10 days of the board's decision. In the absence of an appeal to the board, a license suspension or revocation shall be effective and an administrative fine shall be paid 31 days after notice from the board or after the suspension or revocation action becomes final.*

22980. (a) Notwithstanding any other provision of this division, the sale or possession for sale of counterfeit cigarette and tobacco products, or the sale or possession for sale of counterfeit cigarettes or unstamped packages of cigarettes, by a retailer shall result in the following action seizure of the product by the board or any law enforcement agency and shall constitute a misdemeanor punishable as follows:

~~(1) For the first violation, the board shall issue a warning letter to the retailer.~~

~~(2) A second violation shall be a crime punishable as a felony and shall also result in the revocation of the retailer's license by the board.~~

(1) A first violation with a total quantity of less than 10 cartons of cigarettes shall be a misdemeanor punishable by a fine not to exceed one thousand dollars (\$1,000) or imprisonment not to exceed one year in a county jail, or both the fine and imprisonment.

(2) A second violation within five years with a quantity of less than 10 cartons of cigarettes shall be a misdemeanor punishable by a fine not to exceed five thousand dollars (\$5,000) or imprisonment not to exceed one year in a county jail, or both the fine and imprisonment, and shall also result in the revocation by the board of the retailer's license.

(3) A first violation with a total quantity of more than 10 cartons of cigarettes shall be a misdemeanor punishable by a fine not to exceed two thousand dollars (\$2,000) or imprisonment not to exceed one year in a county jail, or both the fine and imprisonment.

(4) A second violation within five years with a quantity of 10 cartons of cigarettes or more shall be a misdemeanor punishable

1 *by a fine not to exceed fifty thousand dollars (\$50,000) or*  
2 *imprisonment not to exceed one year in a county jail, or both the*  
3 *fine and imprisonment, and shall also result in the revocation by*  
4 *the board of the retailer's license.*

5 (5) *A court shall consider a defendant's ability to pay when*  
6 *imposing fines pursuant to this section.*

7 (b) The provisions of this section shall apply to the holder of the  
8 retailer license and not to an employee of the licensee. However,  
9 the retailer shall not be subject to the provisions of this section if  
10 an employee of the retailer is selling counterfeit cigarette and  
11 tobacco products without the retailer's knowledge.

12 (c) For purposes of this section, counterfeit cigarette and  
13 tobacco products include cigarette and tobacco products that have  
14 false manufacturing labels or cigarette packs without tax stamps  
15 or with counterfeit tax stamps, or a combination thereof.

16 22981. The retailer's license to sell cigarette and tobacco  
17 products shall be subject to the licensee requiring each employee  
18 making retail sales of cigarette and tobacco products to  
19 successfully complete a training program developed by the  
20 department on tobacco control laws every 12 months.

21 22982. (a) The department shall develop the curriculum  
22 requirements for the training programs that train retail sales clerks  
23 regarding tobacco control laws, including prohibitions on the sale  
24 of cigarette and tobacco products to minors. The department may  
25 charge a fee to any person submitting a proposed training program  
26 that covers the department's cost of reviewing the proposed  
27 training program. All money collected by the department pursuant  
28 to this section shall be deposited in the Cigarette and Tobacco  
29 Products Control Fund.

30 (b) The department shall consult with representatives of  
31 cigarette and tobacco products retailers and youth smoking  
32 prevention advocates to develop tobacco control training  
33 programs. The programs shall be developed by January 1, 2004.

34 22983. Upon suspending or revoking the license of a retailer  
35 pursuant to this chapter, the board shall notify all licensed  
36 distributors and wholesalers by fax and e-mail within 48 hours.

37 22984. (a) On and after January 1, 2004, the requirements of  
38 this division for obtaining a license to sell retail cigarette and  
39 tobacco products shall preempt any local government ordinance  
40 that requires a retailer to obtain a license to sell cigarette and

tobacco products or to register with a local government to sell cigarette and tobacco products. However, on and after January 1, 2007, a local government may adopt an ordinance that is more strict than the requirements of this chapter. ~~Funding~~

(b) *Funding* from the Tobacco Control Fund shall not be made available to a local government for purposes of enforcing that ordinance.

(c) *A local government entity may designate a local regulatory authority to enforce the retail licensing provisions of this division.*

(d) *Data collected by the board from retailers pursuant to the licensing provisions of this division shall be shared with a designated local regulatory agency if reasonably necessary for the purposes of enforcing the retail licensing provisions of this division.*

### CHAPTER 3. MANUFACTURERS, DISTRIBUTORS, AND WHOLESALEERS OF CIGARETTE AND TOBACCO PRODUCTS

22985. Commencing January 1, 2003, a manufacturer that provides cigarette and tobacco products to a distributor or wholesaler or to a distributor functioning as a wholesaler, for distribution and sale in this state shall obtain and maintain a valid tobacco manufacturer's license from the board.

22986. Commencing January 1, 2003, a distributor or wholesaler, or a distributor functioning as a wholesaler, that provides cigarette and tobacco products for distribution and sale in this state shall obtain and maintain a valid distributor's license or a valid wholesaler's license from the board.

22987. (a) A manufacturer shall not sell cigarette and tobacco products to a distributor or wholesaler, or a distributor functioning as a wholesaler, for distribution or sale in this state unless the distributor or wholesaler, or distributor functioning as a wholesaler, is licensed pursuant to this division.

(b) A distributor or wholesaler, or distributor functioning as a wholesaler, shall not sell cigarette and tobacco products to a retailer or a wholesaler or distributor, or distributor functioning as a wholesaler, for distribution or sale in this state unless the retailer is licensed pursuant to this division.

(c) No distributor or wholesaler may sell cigarette and tobacco products to any retailer whose license has been suspended or

1 revoked unless all existing cigarette or tobacco tax debts of the  
2 retailer for the purchase of cigarette and tobacco products have  
3 been cleared. The board shall determine the debt status of a  
4 suspended retailer licensee 25 days prior to the reinstatement of the  
5 tobacco retailer's license. A wholesaler or distributor may place a  
6 lien on the retailer not later than 15 days prior to the reinstatement  
7 of a suspended license.

8 (d) A distributor or wholesaler is relieved from liability for  
9 cigarette and tobacco products taxes that became due and payable  
10 if the measure of the tax is represented by accounts that have been  
11 found to be worthless and charged off for income tax purposes, or  
12 if the distributor or wholesaler is not required to file income tax  
13 returns, that have been charged off in accordance with generally  
14 accepted accounting principles. If the distributor or wholesaler has  
15 previously paid the tax, the distributor or wholesaler may, under  
16 regulations adopted by the board, take as a deduction the amount  
17 found worthless and charged off. If any of those accounts are  
18 thereafter in whole or in part collected by the distributor or  
19 wholesaler, the amount so collected shall be included in the first  
20 return filed after the collection, and the tax shall be paid with the  
21 return.

22 22988. (a) Each distributor or wholesaler shall include the  
23 following information on each invoice for the sale of cigarette and  
24 tobacco products:

25 (1) The name, address, and telephone number of the distributor  
26 or wholesaler.

27 (2) The state license number of the distributor or wholesaler as  
28 provided by the board.

29 (3) The amount of excise taxes paid by the distributor or  
30 wholesaler on the sale of cigarette and tobacco products.

31 (b) Each distributor and wholesaler of cigarette and tobacco  
32 products subject to licensing under this chapter shall maintain  
33 accurate and complete records relating to the sale of those  
34 products, including, but not limited to, receipts, invoices, and  
35 other records required by the board.

36 (c) Notwithstanding any other provision of this division, the  
37 ~~sale of counterfeit cigarette and or possession for sale of~~  
38 ~~counterfeit tobacco products, or the sale or possession for sale of~~  
39 ~~counterfeit cigarettes or unstamped packages of cigarettes~~, by a

1 manufacturer, distributor, or wholesaler shall result in the  
2 following:

3 ~~(1) For the first violation, the board shall issue a warning letter~~  
4 ~~to the manufacturer, distributor, or wholesaler.~~

5 ~~(2) A second violation shall be a crime punishable as a felony~~  
6 ~~and shall also result in the revocation of the manufacturer,~~  
7 ~~distributor, or wholesale license. seizure of the product by the~~  
8 ~~board or any law enforcement agency and shall constitute a~~  
9 ~~misdemeanor punishable as follows:~~

10 (1) A first violation with a total quantity of less than 10 cartons  
11 of cigarettes shall be a misdemeanor punishable by a fine not to  
12 exceed one thousand dollars (\$1,000) or imprisonment not to  
13 exceed one year in a county jail, or both the fine and imprisonment.

14 (2) A second violation within five years with a total quantity of  
15 less than 10 cartons of cigarettes shall be a misdemeanor  
16 punishable by a fine not to exceed five thousand dollars (\$5,000),  
17 or imprisonment not to exceed one year in a county jail, or both the  
18 fine and the imprisonment, and shall also result in the revocation  
19 by the board of the manufacturer, distributor, or wholesale license.

20 (3) A first violation with a total quantity of more than 10  
21 cartons of cigarettes shall be a misdemeanor punishable by a fine  
22 not to exceed two thousand dollars (\$2,000) or imprisonment not  
23 to exceed one year in a county jail, or both the fine and  
24 imprisonment.

25 (4) A second violation within five years with a quantity of 10  
26 cartons of cigarettes or more shall be a misdemeanor punishable  
27 by a fine not to exceed fifty thousand dollars (\$50,000) or  
28 imprisonment not to exceed one year in a county jail, or both the  
29 fine and imprisonment, and shall also result in the revocation by  
30 the board of the manufacturer, distributor, or wholesale license.

31 (5) A court shall consider a defendant's ability to pay when  
32 imposing fines pursuant to this section.

33 (d) For the purposes of this section, counterfeit cigarette and  
34 tobacco products includes cigarette and tobacco products that have  
35 false manufacturing labels or cigarette packs without tax stamps  
36 or with counterfeit tax stamps or a combination thereof.

37 22989. (a) In addition to any other tax or fee, a manufacturer  
38 shall pay a fee of not to exceed two cents (\$0.02), as determined  
39 by the board, on or before March 1, 2003, to the board for each  
40 pack of cigarettes that was sold to a distributor or wholesaler for

1 distribution or sale in this state in 1998. The board shall notify each  
2 manufacturer of the amount due under this section on or before  
3 January 31, 2003.

4 (b) This section shall only apply to manufacturers who signed  
5 the tobacco master settlement agreement.

6 (c) This section shall become inoperative, and shall be  
7 repealed, on January 1, 2004, unless a later enacted statute that is  
8 enacted before January 1, 2004, deletes or extends the date on  
9 which it becomes inoperative and is repealed.

10 22989. (a) In addition to any other tax or fee, a manufacturer  
11 shall pay a fee not to exceed two cents (\$0.02), as determined by  
12 the board, for each pack of cigarettes that was sold to a distributor  
13 or wholesaler for distribution or sale in this state in the prior  
14 calendar year.

15 (b) This section shall become operative on January 1, 2004.

16  
17 CHAPTER 4. MISCELLANEOUS  
18

19 22990. All moneys collected pursuant to this division shall be  
20 deposited in the Cigarette and Tobacco Products Control Fund,  
21 which is hereby created in the State Treasury. All funds in the  
22 Cigarette and Tobacco Products Control Fund are available for  
23 expenditure, upon appropriation by the Legislature, for the  
24 following purposes:

25 (a) To the board for the administration and investigation of the  
26 programs relating to the issuance and use of cigarette tax stamps,  
27 cigarette and tobacco products retailer's licenses, cigarette and  
28 tobacco products wholesaler's licenses, cigarette and tobacco  
29 products distributor's licenses, and cigarette and tobacco  
30 manufacturer's licenses. Included in those costs shall be  
31 reimbursement to licensed distributors and wholesalers for the  
32 actual cost of labor for applying indicia or impressions, bonding  
33 cost, warehouse space, and stamping equipment lease, including  
34 case cutters and packers. The board shall adjust reimbursement to  
35 the distributor or wholesaler to reflect those actual costs when  
36 renewing its contract for cigarette indicia or impressions.

37 (b) To the department for costs related to controlling youth  
38 access to cigarette and tobacco products.

39 (c) To the Bureau of Investigation of the Department of Justice  
40 for criminal investigative activities associated with criminal

activity in the sale of cigarette or tobacco products or counterfeit cigarette or tobacco products.

~~22991. Upon confiscating cigarette or tobacco products, the board shall return the products to the licensed distributor that paid the tax on the products. Any violation of this division by any person, except as otherwise provided, is a misdemeanor. Each offense shall be punished by a fine not to exceed five thousand dollars (\$5,000), or imprisonment not exceeding one year in a county jail, or both the fine and imprisonment.~~

22992. Any prosecution for a violation of any of the penal provisions of this division shall be instituted within five years after the commission of the offense or within two years after the violation is discovered, whichever is later.

SEC. 2. Section 30473.5 of the Revenue and Taxation Code is amended to read:

30473.5. (a) Any person who possesses, sells, or offers to sell, or buys or offers to buy, any false or fraudulent stamps or meter impressions provided for or authorized under this part ~~with a tax value greater than seven hundred fifty dollars (\$750) in a~~ quantity of less than 2000 is guilty of a misdemeanor, punishable by a fine not to exceed five thousand dollars (\$5,000) or imprisonment not exceeding one year in a county jail, or by both the fine and imprisonment.

(b) Any person who, with intent to defeat or evade or with the intent to aid another to defeat or evade the taxes imposed by this part, possesses, sells, or offers to sell, buys or offers to buy, any false or fraudulent stamps or meter impressions provided for or authorized under this part in a quantity of 2000 or greater, is guilty of a misdemeanor, punishable by a fine not to exceed fifty thousand dollars (\$50,000) or imprisonment not exceeding one year in a county jail, or by both the fine and imprisonment.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

1		_____
2	CORRECTIONS	
3	Text — Pages 4 and 10.	
4		_____
5		

